

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

SCOTT S. SMITH,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of the Social Security Administration,

Defendant.

CAUSE NO.: 2:19-CV-496-TLS-JPK

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Unopposed Motion for Approval of Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b) [ECF No. 24], filed on October 7, 2022. The Plaintiff represents that the Commissioner does not object to the motion. For the reasons stated below, the motion is GRANTED.

BACKGROUND

On October 5, 2016, the Plaintiff filed an application for disability insurance benefits, alleging disability beginning on March 2, 2014. AR 15, ECF No. 11. After the Administrative Law Judge issued an unfavorable decision, the Plaintiff filed a Complaint in this Court, and the Court reversed and remanded the case for further proceedings. ECF No. 19. On May 21, 2021, the Court awarded the Plaintiff's attorney Equal Access to Justice Act (EAJA) fees in the amount of \$11,278.20. ECF No. 23. Ultimately, the Social Security Administration awarded the Plaintiff past-due benefits, twenty-five percent of which is \$18,228.03. *See Notice of Award*, ECF No. 24-1; Pl. Mot. 1-2, ECF No. 24.

In the instant motion, the Plaintiff's attorney requests an award of attorney fees under 42 U.S.C. § 406(b) in the amount of \$18,228.03. Pl. Mot 2. In the retainer agreement, the Plaintiff

agreed to pay his attorney twenty-five percent of all past-due benefits. *See Fee Agreement*, ECF No. 24-2. Counsel represents that, if fees are awarded under § 406(b), he will refund to the Plaintiff the \$11,278.20 in EAJA fees previously awarded. *See Pl. Mot. 2.*

ANALYSIS

The Plaintiff's counsel, subject to refunding \$11,278.20 in EAJA fees, requests \$18,228.03 in attorney's fees pursuant to 42 U.S.C § 406(b). The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the "character of the representation and the results the representative achieved." *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.* In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount in attorney's fees is consistent with the contingency agreement, and counsel will refund the \$11,278.20 in EAJA fees to the Plaintiff. Counsel represents that 57.0 attorney hours were spent in federal court on this case, resulting in an effective hourly rate of \$319.79. *See Pl. Mot. 2–3.* This hourly rate is reasonable given the contingent nature of this case, the favorable past-due benefit award, and the benefit the Plaintiff will receive in future payments. *See Osmun v. Comm'r of Soc. Sec.*, No. 1:16-CV-273, 2020 WL 7334271, at *3 (N.D. Ind. Dec. 14, 2020) (effective hourly rate of \$525); *Niebuhr v. Saul*, No.

18-CV-720, 2020 WL 6484488, at *1 (W.D. Wis. Nov. 4, 2020) (effective hourly rate of \$579); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney's fees with hourly rates ranging from \$400 to \$1,500).

CONCLUSION

For the reasons stated above, the Court hereby GRANTS the Plaintiff's Unopposed Motion for Approval of Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b) [ECF No. 24] and AWARDS attorney fees under 42 U.S.C. § 406(b) in the amount of \$18,228.03. The Court ORDERS the Plaintiff's attorney to refund to the Plaintiff the \$11,278.20 in EAJA fees previously awarded in this case.

SO ORDERED on October 11, 2022.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT